



**Texas Bankers Association
Response to Request For Information
Texas House Committee on Judiciary & Jurisprudence
Interim Charge – Rule Against Perpetuities**

Charge

Interim Charge 3: Study the Rule Against Perpetuities as used by trusts. Examine whether statutory changes are necessary and appropriate to make Texas more competitive and keep trust capital and estate planning businesses in Texas.

Request For Information

Due to the ongoing COVID-19 pandemic and the challenges in scheduling public hearings at this time, the Committee is requesting written submissions from state agencies, interested parties, and the public regarding all assigned interim charges. In addition, the Committee is seeking information regarding the effects of COVID-19 in areas within its jurisdiction.

Submission Guidelines:

- Submissions must be in Microsoft Word or Adobe PDF.
- Submissions are limited to five (5) pages in length.
- Submissions must be submitted via email to the Committee Clerk, Cassidy Zgabay, at cassidy.zgabay_hc@house.texas.gov.
- Submissions must include the submitter's name, organization or entity (if applicable), phone number, and mailing address.
- If responding to multiple topics, please submit separate submissions for each one.
- **The deadline for all submissions is Monday, November 30, 2020.**

All submissions will be distributed to each member of the Committee after the deadline and posted on the House website.

Response

Overview

The Rule Against Perpetuities (“RAP”) is an antiquated legal principal based on English feudal law that defines a permissible duration for certain trusts. Texas’ Rule Against Perpetuities statute generally provides that an interest in a trust must be finally settled (vest) no later than 21 years after some life in being at the time of the creation of the trust. The restrictive nature of Texas’ RAP statute not only limits Texans’ choices as they develop estate and gift plans, it also puts the state at an economic disadvantage because the estate plans of Texans are being developed in one of the numerous other states that have already extended their RAP statutes. These dollars leave the state for generations.

Other States

The following states have either eliminated the rule against perpetuities to or modified it to allow significantly extended durations for trusts: Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Wisconsin and Wyoming.



Texas

With respect to estate planning, Texas is currently at a disadvantage. As previously noted, the majority of states have updated or eliminated their RAP laws and Texas must do the same to prevent the flow of millions of dollars in assets into more favorable jurisdictions. While we do not believe that elimination of the RAP is necessary to achieve this goal, two critical changes must be made to Section 112.036 of the Texas Property Code:

1. Clarify the maximum allowable term for a Texas trust. The current statutory language should be replaced with a defined term of years. This will eliminate confusion and allow for better planning and administration of trust assets.
2. Specify a maximum allowable term that is reasonable and competitive with other states. Because a number of states have eliminated the RAP or adopted very long, fixed permissible periods for the Rule, Texas residents who desire more flexibility in their estate planning process may simply move their assets elsewhere. To be competitive with these other states, Texas should establish a maximum vesting term of at least 360 years.

Thank you for the opportunity to provide feedback on this issue.